



United States
Department of
Agriculture

Forest
Service

FS-388

A Guide to the Forest Service Appeal Regulation (36 CFR 211.18)

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MONTHLY ALERT

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Dear National Forest User:

The Forest Service manages the National Forests for a variety of uses and purposes. Our District Rangers, Forest Supervisors, Regional Foresters, and I make many decisions affecting wildlife, timber, recreation, range, and other forest resources and management activities. The decisions may affect communities, organizations, companies, and individuals like you.

Forest officers look at an issue from many viewpoints before making a decision. Nevertheless, some Forest users may disagree with some of our decisions. Decisions can be reviewed and, in appropriate cases, changed. If you disagree with a Forest officer's decision, you should, if possible, discuss your concerns with that person. The degree of dissatisfaction can often be reduced through increased understanding of the circumstances relating to the decision. The Forest officer would appreciate the opportunity to hear your concerns and provide any information you may need to understand the decision. If you are still dissatisfied, you may use the procedures described in this publication. We want to ensure that our decisions are fair. The appeal process is to help us do that.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Max Peterson". The signature is fluid and cursive, with the first name "R. Max" and the last name "Peterson" clearly distinguishable.

R. Max Peterson
Chief

An Overview of the Appeals Process

The appeal regulation provides an opportunity to have a decision quickly and informally reviewed at higher Forest Service organizational levels. Our objective is to have decisions reviewed fairly and objectively.

There are several steps in the process that will help ensure that your concerns are clearly stated and the position of the Forest officer is understood.

The steps in the process are relatively simple, and help from an attorney is not necessarily needed. The appeal is started by notifying the Forest officer who made the decision (known as the deciding officer) in writing of your disagreement with a specific decision and the changes you feel are needed. This must be done in the time period stated in the regulation. You must also state the reasons why you feel the decision is in error and why it should be changed. The deciding officer will respond to each of your reasons. You may then comment on the deciding officer's response. The person who will review your case (known as the reviewing officer) will then consider all information in the record and issue a decision on your appeal.

If you feel your reasons for the appeal cannot be adequately explained in writing, you may ask to talk to the reviewing officer in person. The decision to allow an oral presentation is made by the reviewing officer. You may also request that the activity with which you disagree be stopped until a decision is issued on your appeal. A decision on your request to stop an activity is made by the reviewing officer and can be appealed, provided that a level of appeal is available.

The following questions and answers and flow chart will help you understand the appeal process. Please refer to 36 CFR 211.18, Appeal of Decisions of Forest Officers, reprinted at the end of this publication, for specific requirements of the process and for specific exclusions.

Questions and Answers About the Appeal Process

Who do I see to try to get a decision changed?

See the person who made the decision (deciding officer). A discussion with the deciding officer may result in improved understanding and mutual agreement. If this does not satisfy your concerns, you may write a letter to the deciding officer requesting that the decision be changed. This letter is called a notice of appeal (3)¹ and starts the appeal process (36 CFR 211.18(c)).

What decisions may I appeal?

Practically any decision (*I*) of a Forest officer can be appealed. Most decisions can be appealed under this regulation, but some decisions have to be appealed under other regulations. For example, decisions involving the Freedom of Information Act and decisions concerning contracts may not be appealed under this regulation. Ask the deciding officer which regulation applies to your concern (36 CFR 211.18(a),(b)).

How many levels of appeal are available?

The appeal process is set up to allow your appeal to be reviewed at two different levels (*II*) of the Forest Service organization. For example, if you appealed a decision made by a District Ranger, the decision is reviewed by the Forest Supervisor (first-level appeal). Subsequently, if you are still dissatisfied, the Forest Supervisor's decision may be appealed to the Regional Forester (second-level appeal).

Decisions by a Forest Supervisor are reviewed at the first level by the Regional Forester and at the second level by the Chief of the Forest Service. Regional Forester decisions may be appealed to the Chief. Second-level appeal decisions by the Chief may be further reviewed at the discretion of the Secretary of Agriculture. You have the right to appeal any initial decision by the Chief to the Secretary (36 CFR 211.18(f)).

How soon must I send this notice of appeal?

At the first level of appeal, you must mail or hand-deliver your notice of appeal to the deciding officer within 45 days after the date the decision was made. At the second level, you must mail or hand-deliver your notice of appeal within 30 days. The appeal period cannot be extended (36 CFR 211.18(c)).

¹Italic numbers in parentheses refer to the flow chart at the end of this section.

Will I need an attorney?

The appeal process is not like a formal legal proceeding. You can give your reasons why you think the decision is in error without legal counsel. However, if you wish, you may be represented by an attorney.

What must I say in my notice of appeal?

You must identify the decision, the person who made it, and the decision date. You must also state how you will be affected by the decision and how you would like it changed (36 CFR 211.18(e)).

What else is required for my appeal?

You must give the reasons why you think the decision was in error. At the first level of appeal, you may include your statement of reasons (3) in your notice of appeal; or if sent separately, the statement of reasons must be filed with the deciding officer within 45 days after the date the decision was made (36 CFR 211.18(c) (1)). This period may be extended by the reviewing officer provided you are able to demonstrate good cause. At the second level of appeal, the statement of reasons must be filed with the notice of appeal.

What happens after I have submitted my notice of appeal and statement of reasons to the deciding officer?

The deciding officer responds in writing to your statement of reasons and sends you a responsive statement (6). Within 20 days of the mailing date, you may comment (7) on the deciding officer's response to your statement of reasons. All records relating to your appeal will then be sent to the forest officer one administrative level higher than the deciding officer (reviewing officer) (9). The reviewing officer will review the record and make a decision (10) on your appeal (36 CFR 211.18(g),(p)).

May I present my views in person to the reviewing officer before a decision is made on my appeal?

Within 45 days of the date of the decision at the first level of appeal, you may ask to make an oral presentation (3) to the reviewing officer. Send this request to the deciding officer, who will forward it to the reviewing officer (36 CFR 211.18(m)). At the second level of appeal, your request for oral presentation must accompany the notice of appeal.

May I ask to have the activity stopped while I appeal it?

The activity can be carried out unless you request in writing that it be stopped until your appeal has been considered by the reviewing officer. Your request for stay (4) must be sent to the deciding officer stating what action you want stopped and why. The request for stay is forwarded to the reviewing officer who will issue a decision on the request within 10 days of its receipt (5). A stay may be requested at the first level at any time before the reviewing officer has made a decision on your appeal (36 CFR 211.18 (h) (1)).

May I appeal a decision to deny a request for a stay or oral presentation?

Decisions on a request for a stay may be appealed. Decisions on a request for oral presentation may not be appealed (36 CFR 211.18(o)).

Is the process for appealing to the second level the same as that for appeal at the first level (1)?

The process for appeal at the second level is almost the same as at the first level, except that your notice of appeal must be mailed or delivered within 30 days. A statement of reasons to support your appeal, any request for a stay, and any request for an oral presentation must accompany your notice of appeal to the second level (36 CFR 211.18(c) (2)).

May I have more time to make my appeal or complete the paperwork?

The time limit for submitting the notice of appeal cannot be extended. At the first level of appeal, extensions of time to prepare a statement of reasons, to request an oral presentation, to provide comments on the responsive statement, and to submit comments following an oral presentation may be granted for good cause by the reviewing officer (36 CFR 211.18(d)). At the second level, the statement of reasons and request for oral presentation must accompany the notice of appeal.

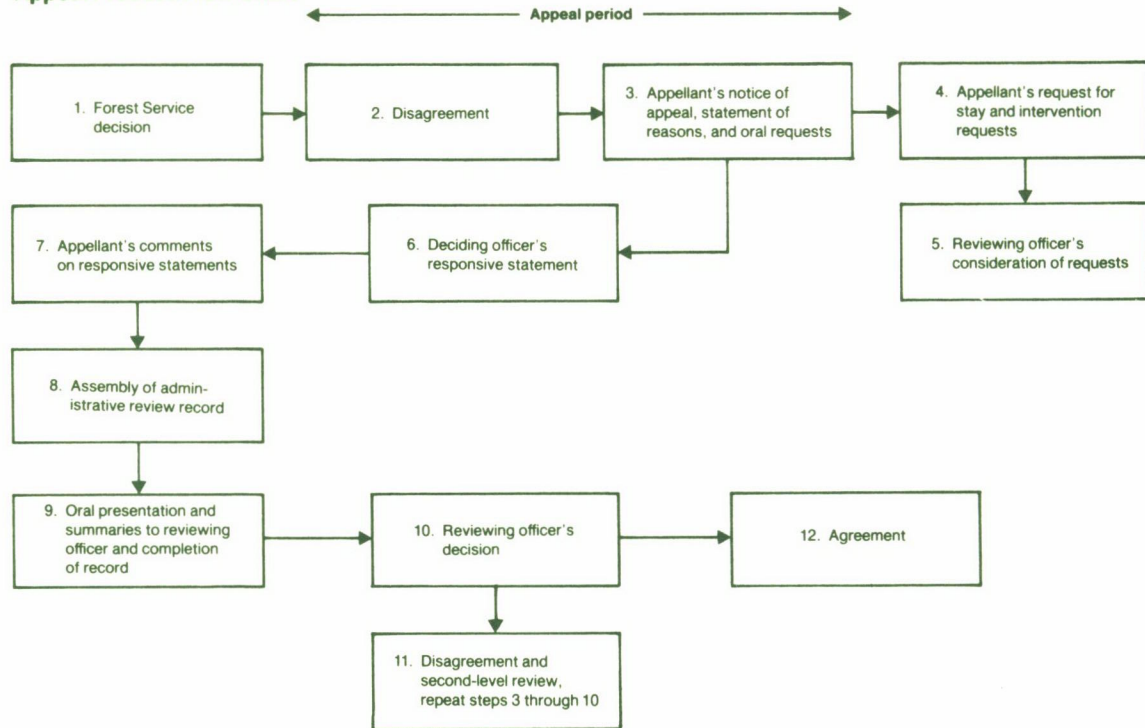
May other interested persons or organizations become involved in my appeal?

Those persons or organizations with an immediate interest in the decision you are appealing may ask to become intervenors (4). They may intervene for or against your views on the decision. If the reviewing officer grants them status as intervenors, they have the same rights you do in the appeal. For example, they may ask for stays and oral presentations. In addition, any person may submit comments on your appeal for consideration by the reviewing officer without becoming an intervenor (36 CFR 211.18(k) (1)).

What if I have more questions about the decision?

Contact the deciding officer to discuss questions about a particular decision and appeal. General questions concerning the appeal process can be answered at your local Forest Service office.

Appeal Process Flow Chart



Definitions of Terms

Appeal. A request by any party dissatisfied with a decision of a Forest officer to have that decision reviewed by a higher organizational level within the Forest Service and where appropriate by the Secretary of Agriculture.

Appeal decision. A reviewing officer's decision made in response to an appeal. The decision will affirm, remand, or reverse the decision under appeal.

Appeal record. A distinct set of original documents directly concerning the appeal and constituting the evidentiary background of the case. It includes, but is not limited to, notices of appeal, comments, statements of reasons, responsive statements, procedural requests and determinations, correspondence, summaries of oral presentations and exhibits, appeal decisions, and other information the reviewing officer may consider necessary to reach a decision (36 CFR 211.18(p)).

Appellant. The party who appeals a Forest officer's decision.

Deciding officer. The Forest officer who made the decision being appealed.

Decision. An order, ruling, or other exercise of discretion by a forest officer concerning National Forest System lands. Such decisions may be made orally, but are usually written.

Filing. The act of sending or delivering an appeal document.

Forest officers. The line officers responsible for the administrative levels of the Forest Service. These include the Chief, Regional Foresters, Forest Supervisors, District Rangers, or their staff with delegated authority.

Immediate interest. A direct and logical relationship between a person or organization and a decision of a Forest officer.

Initial decision. The substantive decision by a Forest officer that concerns the National Forest System and is the subject of an appeal.

Intervenor. An individual or organization who has an immediate interest and who has been recognized as a participant in an appeal decision. An intervenor may support either the appellant or the deciding officer or take an independent position.

Intervention request. The written request by an individual or organization seeking to become a recognized participant in an appeal proceeding. Intervention is granted at the discretion of the reviewing officer.

Newspaper of general circulation. A newspaper that is widely distributed in the geographic area of the Forest Service administrative level making the decision and/or the geographic area affected by the decision.

Notice of appeal. The written documents filed by an aggrieved party with the Forest officer who made the decision.

Oral presentation. A meeting where the appellants or intervenors are permitted to express their views orally to the reviewing officer or designated representative and to submit further written material. Oral presentations may be requested by either the appellant or intervenors, and are held at the discretion of the reviewing officer.

Parties affected. Persons or organizations who have a contractual relationship with the Forest Service or who are otherwise directly involved in the consequences of a decision.

Parties to the appeal. Appellants and intervenors.

Procedural decisions. As distinguished from substantive decisions and appeal decisions, procedural decisions are rulings that pertain to the format, time periods, and other specific steps and rules to be followed during the appeal process. Only procedural decisions on stays and dismissals are appealable, if a level is available.

Relief. The outcome of the appeal as requested by parties to the appeal.

Remand. Action by the reviewing officer that sends the case back to the deciding officer with specific instructions.

Responsive statement. A written document prepared by the deciding officer that addresses the issues contained in the appellant's statement of reasons.

Reviewing officer. The Forest officer who reviews the decision appealed and who is one administrative level higher than the Forest officer who made the decision being appealed.

Statement of reasons. A written document prepared by, or on behalf of, the appellant or intervenor, setting forth the issues and reasons that form the basis of the appeal (36 CFR 211.18(c)).

Stay. An action requested by the appellant and/or intervenor that, if granted, stops initial implementation of the decision until 10 days after the date of the appeal decision (36 CFR 211.18(h)).

Suspend. An action by the reviewing officer that holds the appeal in abeyance until additional information is received by the reviewing officer in order to clarify the issues (36 CFR 211.18(q)).

Written instrument. Any written contract, agreement, permit, or other document having the legal effect of a contract.

36 CFR 211.18 Appeal of Decisions of Forest Officers

(a) ***Matters subject to appeal.*** (1) Decisions of Forest Officers concerning the National Forest System and not excluded in paragraph (b) are subject to appeal.

(2) Written notice of a decision shall be provided to the party or parties to a written instrument issued by the Forest Service and affected by the decision, and to any other interested person who has requested in writing notification of the specific decision.

(3) For other persons, notification of a decision may be provided through publication in a newspaper of general circulation.

(b) ***Matters excluded from appeal under this section.*** (1) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR 24.

(2) Decisions involving Freedom of Information Act denials under 7 CFR 1(A) or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions in which the jurisdiction of another Government agency, the Comptroller General, or a court supersedes that of the Department of Agriculture, or decisions to provide advisory, non-binding recommendations to other agencies which have the final authority to implement the recommendations in question.

(4) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 228.14 (Minerals); 36 CFR 292.15(1) (Appeals, Sawtooth National Recreation Area, Private Lands); 36 CFR 223.11 (Administration of Cooperative or Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Relocation Payment or Amount); and 4 CFR 21 (Bid Protests).

(5) Decisions pursuant to OMB Circular A-76.

(6) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949, as amended.

(7) Decisions covered by the Contract Disputes Act.

(8) Decisions involving personnel matters.

(9) Decisions where relief sought is reformation of a contract or award of monetary damages.

(10) Procedural decisions made under this Subpart, except those involving stays and dismissals.

(11) Preliminary planning process decisions made prior to completion of final plans and guides prepared pursuant to 36 CFR 219 and 40 CFR 1500-1508.

(c) *Filing procedures and timeliness.* (1) A notice of appeal of any initial decision must be filed with the Forest Officer who made the decision, known as the Deciding Officer, within 45 days of the date of the decision. A statement of reasons to support the appeal, and any request for an oral presentation must also be filed within the 45-day period for filing a notice of appeal unless an extension is granted.

(2) A notice of appeal at the second level must be filed within 30 days of written decision. A statement of reasons to support the appeal, any request for stay, and any request for an oral presentation must accompany any notice of appeal at the second level.

(3) The period to appeal a decision made according to 40 CFR 1505.2 shall not end prior to the 30-day period provided for in 40 CFR 1506.10.

(4) Postmarks, other evidence of mailing, or, if not mailed, time of receipt, will determine time of filing. Weekends or Federal holidays are included in time allowed for filing, but when filing time would expire on a weekend or holiday, time is extended to the next business day.

(5) Questions on timeliness will be decided by the Reviewing Officer.

(6) Decisions may be implemented unless a stay is granted.

(d) *Extensions.* (1) Time for filing notice of appeal may not be extended.

(2) Written requests for extensions to request an oral presentation, to prepare a statement of reasons, to provide comments on the responsive statement, and to submit comments following an oral presentation may be granted by the Reviewing Officer for good cause shown by the Appellant. A decision will be made within 20 days of receipt and written notification will be provided.

(e) *Notice of appeal content.* The notice must specifically identify the decision being appealed, the decision date, the Forest Officer who made the decision, how the Appellant is affected by the decision, and the relief desired.

(f) *Levels of appeal.* (1) The available levels of appeal are in sequence according to the National Forest System line officer relationship. A decision made within delegated authority by any officer who serves as staff to a line officer listed below is considered a decision made by the line officer. A procedural decision cannot be appealed to a level higher than that available for the initial substantive decision from which the procedural matter arises.

(i) Initial decisions of a District Ranger may be appealed to the Forest Supervisor, with second level appeal to the Regional Forester.

(ii) Initial decisions of a Forest Supervisor may be appealed to the Regional Forester, with second level appeal to the Chief.

(iii) Initial decisions of a Regional Forester may be appealed to the Chief.

(iv) Initial decisions of the Chief may be appealed the Secretary of Agriculture.

(2) Appeal decisions made by the Chief will be sent to the Secretary within one business day. The Secretary may exercise discretion to review such decisions, but will accept a notice of appeal or petition only for initial decisions made by the Chief.

(3) A notice of appeal of any initial decision made by the Chief shall, within 5 days of its receipt by the Chief, be sent along with the relevant decision to the Secretary for review at the Secretary's discretion. The appeal is deemed denied if the Secretary takes no action within 10 days of receiving the appeal.

(4) Appeal decisions made by the Chief may be implemented if the Secretary, within 10 days of receipt, does not exercise discretionary review.

(5) If the Secretary elects to review a decision made by the Chief, the review may be conducted based on the record before the Chief or under other procedures the Secretary may deem appropriate, including the preparation of a responsive statement.

(6) Decisions at the final level of review constitute the final administrative determination of the Department of Agriculture.

(g) **Responsive statement.** At each level of appeal except for decisions of the Chief, the Deciding Officer will, within 30 days of receiving a statement of reasons, prepare a responsive statement and send it to the parties to the appeal. The responsive statement will respond to Appellant's reasons, and by specific reference may incorporate documents submitted by parties to the appeal. Appellants may, within 20 days from the mailing date of the responsive statement, provide a concise reply. Upon receipt of such reply, or at the end of the 20-day period, whichever comes first, the appeal record will be sent to the Reviewing Officer.

(h) **Stay of decision pending appeal.** (1) A stay may be requested at any time at the first level of appeal and will be considered only if the Appellant submits information explaining what the Appellant wants stopped and why. The Forest Officer receiving such information shall immediately send the request to the Reviewing Officer, who shall, within 10 days of receiving it, grant or deny the stay, and notify the Appellant in writing. If granted, the stay will remain in effect until 10 days after the date of the Reviewing Officer's decision on the original appeal.

(2) Decisions to grant or to deny stay requests are appealable if a level is available as set forth in paragraph (f) of this section.

(i) **Dismissal.** (1) An Appellant may withdraw an appeal at any time by notifying the Deciding Officer and other parties to the appeal in writing.

(2) A Reviewing Officer may dismiss an appeal when:

(i) Appellant has failed to submit a timely statement of reasons and the notice of appeal provides an insufficient basis upon which to base a decision.

(ii) Relief desired by the Appellant cannot be granted under existing facts or laws.

(3) Dismissals are appealable, if a level is available as set forth in paragraph (f) of this section.

(j) **Scope of appeal.** Throughout all levels of appeal, an Appellant and any Intervenor shall be confined to the issues originally raised in the appeal. New information on the original issues may be introduced at any level.

(k) **Provision for comments.** Any person or organization may submit written comments for the record. Such comments will be considered as provided for in paragraph (p).

(l) **Intervenors.** (1) At the discretion of the Reviewing Officer, any person or organization having an immediate interest in the subject of an appeal may intervene by submitting written information at any level of the appeal process. Such intervention shall not act to elevate the appeal to levels higher than available to the original Appellant.

(2) In appeals involving Intervenors, the Reviewing Officer may prescribe special procedures to expedite the process. The parties to the appeal will be notified of these procedures.

(3) Appellants and Intervenors must concurrently furnish copies of all submissions to each other; otherwise, such submissions may be removed from the appeal record. At the discretion of the Reviewing Officer, Appellants may be given time to review and comment on initial submissions by Intervenors and vice versa.

(4) Appellants or Intervenors appealing a decision to a higher level must furnish copies of their notice of appeal to all other named parties to the appeal.

(m) **Oral presentation.** Within the appeal time limits established herein, parties to an appeal may ask to give an oral presentation. The Reviewing Officer will respond in writing to the request no later than 10 days after receiving the appeal record. If the request is granted, the Reviewing Officer will advise the parties of who will hear the presentation, and of the place, time, and date. Participants may provide documentary material at the presentation and, within 10 days after the presentation, may also submit a brief summary of their remarks.

(n) **Consolidation of appeals.** Multiple appeals of the same decision, or of similar decisions involving common issues, facts, or law, may be consolidated by the Reviewing Officer who may then issue one appeal decision. At the discretion of the Reviewing Officer, the Deciding Officer may prepare one responsive statement to multiple appeals.

(o) **Procedural matters.** (1) Decisions on stays and dismissals are the only appealable procedural decisions. Such appeals must be filed with the Deciding Officer within 30 days of the procedural decision. A statement of the Appellant's reasons must be included.

(2) Within 10 days of receipt, the Deciding Officer shall send appeals on stays and dismissals and a response to the Reviewing Officer for decision.

(3) Decisions on procedural matters will be made by the Reviewing Officer within 10 days of receipt and all parties will be notified of the decision in writing.

(4) Appeal of decisions on procedural matters cannot exceed the highest level available for the initial substantive decision appealed.

(p) **Appeal record.** The record consists of a distinct set of identifiable documents directly concerning the appeal, including, but not limited to, notices of appeal, comments, statements of reasons, responsive statements, procedural determinations, correspondence, summaries of oral presentations and related documents, appeal decisions, and other information the Reviewing Officer may consider necessary to reach a decision. For a period not to exceed 10 days following the date the record is received by the Reviewing Officer or from the date of the oral presentation, whichever is the later date, parties may submit additional information to the Reviewing Officer for the record. They must concurrently send copies to all other parties who may within 20 days of the date they receive such material, provide a concise response to the Reviewing Officer. Upon receipt of such response, the record will be closed. The record is open for public inspection.

(q) **Request for additional information or remand for further action.** If the appeal record is considered inadequate to affirm or reverse a decision, the Reviewing Officer may suspend the appeal process and request additional information, or remand the case with instructions for further action.

(r) **Appeal decision.** An appeal decision will be based only on the record and should be made within 30 days of the date the record is closed. The Appellant will be notified if more time is needed.

(s) **Continuance of appeals.** Provisions of 36 CFR 211.19 will remain in effect for appeals initially filed between June 28, 1977, and the effective date of 36 CFR 211.18.

This publication supersedes FS-309, The Appeal Regulation (36 CFR 211.20-211.37).

August 1984

